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UNCLAS SECTION 01 OF 02 VIENNA 000092

SIPDIS

CA/OCS/CI FOR ECONWAY AND GDEBOER; EUR/AGS FOR VVIKMANIS-KELLER

TAGS: [KOCI](#) [CASC](#) [AU](#)

SUBJECT: SYLVESTER HAGUE CASE: FIRST MEETING WITH AUSTRIAN CENTRAL AUTHORITY

REF: STATE 2469

1. SUMMARY: PER REFTTEL, CONGEN MET WITH THE NEW DIRECTOR OF THE AUSTRIAN CENTRAL AUTHORITY (ACA), JUDGE ROBERT FUCIK (FOO-CHIK) ON JANUARY 11, 2006. THE LENGTHY DISCUSSION COVERED BOTH GENERAL ISSUES AND THE CURRENT SYLVESTER ACCESS CASE FILED UNDER THE HAGUE CONVENTION. FUCIK WAS REASSURINGLY WELL-VERSED ON THE HISTORY AND DETAILS OF THE CASE, AND SURPRISINGLY FORTHRIGHT ABOUT THE PAST-HANDLING OF THE CASE. FURTHERMORE, HE MADE SEVERAL CONCRETE SUGGESTIONS FOR PROGRESS. IN ADDITION, HE CLARIFIED THAT THE GRAZ COURT HAD NO INTENTION OF PERMANENTLY DENYING MR. SYLVESTER ACCESS TO HIS DAUGHTER, AND WOULD BE DELIGHTED IF INFORMAL CONTACT RESUMES. THE ATMOSPHERICS WERE STRIKINGLY DIFFERENT FROM POST'S PREVIOUS MEETINGS WITH THE ACA AND FUCIK WAS MUCH MORE FORTHCOMING THAN EARLIER INTERLOCUTORS. END SUMMARY.

2. ACA FUCIK RESPONDED SWIFTLY TO POST'S REQUEST FOR A MEETING, APPEARING IN CONGEN'S OFFICE THE VERY NEXT DAY. HE WAS THOROUGHLY FAMILIAR WITH THE SAD HISTORY OF THIS CASE, AND EXPRESSED REGRET THAT THE AUSTRIAN COURTS HAD ALLOWED THE ABDUCTION TO STAND. HE FRANKLY SAID THAT WHILE HE COULD NOT RESTORE THE FAMILY TIME THAT MR. SYLVESTER HAD LOST IN THE LAST 10 YEARS, HE BELIEVED WE MUST ALL WORK TOGETHER TOWARDS INCREASING HIS ACCESS TO HIS DAUGHTER CARINA SO THEY CAN HAVE A NORMAL AND HEALTHY RELATIONSHIP. HE EMPHASIZED SEVERAL TIMES THAT WE MUST CREATE A "WIN/WIN SITUATION" WHERE CARINA AS WELL AS HER PARENTS SEE THE ACCESS AS SOMETHING POSITIVE.

3. FUCIK SURPRISED CONGEN BY INDICATING THAT, CONTRARY TO WHAT WE HAD PREVIOUSLY HEARD FROM THE ACA, THE ACA COULD DO MORE TO FULLY COMPLY WITH THE 2004 ECHR RULING OBLIGING AUSTRIA TO HELP IN RESTORING MR. SYLVESTER'S ENJOYMENT OF A FAMILY LIFE. HE ADMITTED THAT MORE COULD BE DONE BY HIS OFFICE TO MAKE CREATIVE APPROACHES TO IMPROVING ACCESS, AND OFFERED A RANGE OF SUGGESTIONS, FROM FAMILY THERAPY (WHICH HE THOUGHT MIGHT BE TOO EXTREME) TO MEDIATION TO VISITATION AWAY FROM CARINA'S HOME INITIALLY ACCOMPANIED BY A SOCIAL WORKER. HE ADDED THAT THE ECHR CONTINUES TO MONITOR AUSTRIAN COMPLIANCE, EVEN IN THIS NEW ACCESS CASE. HE ADVISED THAT WHILE HE WOULD MAKE SUGGESTIONS ON POSSIBILITIES, MR. SYLVESTER'S ATTORNEY WAS THE APPROPRIATE PERSON TO PROPOSE THESE TO THE JUDGE.

4. CONGEN CONSULTED FUCIK ON THE BEST WAY FOR POST TO GAIN ACCESS TO THE MARCH HEARING WITHOUT ANTAGONIZING THE JUDGE, WHO ALREADY APPEARED HOSTILE TO MR. SYLVESTER. HE WELCOMED THE IDEA OF EMBASSY ATTENDANCE, AND SUGGESTED THAT A CONOFF GO IN THE ROLE OF MR. SYLVESTER'S "VERTRAUENSPERSON" OR "TRUSTED PARTY," EXPLAINING THAT, IN ADDITION TO ONE'S ATTORNEY, A LITIGANT COULD HAVE A CHOSEN VERTRAUENSPERSON ATTEND THE HEARING. THE LIMIT ON ATTENDEES, HE EXPLAINED, IS MOSTLY BECAUSE HEARINGS ARE HELD "IN CHAMBERS" AND SPACE IS QUITE LIMITED. HE THOUGHT A CONOFF COULD USEFULLY SERVE AS A SORT OF "CULTURAL TRANSLATOR."

5. FUCIK ACKNOWLEDGED THAT THE AUSTRIAN FAMILY LAW SYSTEM IS QUITE DIFFERENT FROM THE U.S. SYSTEM, WHICH HE HAD HAD A CHANCE TO OBSERVE IN NEW YORK CITY SOME YEARS AGO. HE SUGGESTED THAT WE MIGHT HAVE ONE OF HIS AUSTRIAN COLLEAGUES, WHO HAD ACTUALLY SPENT 6 MONTHS IN THE NYC ATTORNEY'S OFFICE, BRIEF ON THE DIFFERENCES IN THE TWO SYSTEMS, PERHAPS IN CONJUNCTION WITH THE PROPOSED VISIT OF CI DIRECTOR CONWAY. HE ADDED THAT HE HIMSELF WOULD LIKE TO ADD TO THE TRANSPARENCY OF THE PROCESS BY ANSWERING OUR QUESTIONS ABOUT SYSTEMIC ISSUES AND LEGAL POSSIBILITIES, AND PROMISED BETTER COMMUNICATION WITH US. HE EXPRESSED CONCERN OVER SOME OF THE JUDGE'S REPORTED COMMENTS, LEAVING THE IMPRESSION HE WOULD MAKE SOME DISCREET INQUIRIES OF HIS OWN.

6. FUCIK ALSO CLARIFIED THAT THE CURRENT COURT ORDER WAS ONLY MEANT TO CREATE SOME "BREATHING ROOM" FOR CARINA, WHOM THE COURT PSYCHOLOGIST FELT WAS FEELING OVERWHELMED BY THE "PRESSURE" SURROUNDING MR. SYLVESTER'S VISITS. THE CURRENT SITUATION IS ONLY TEMPORARY, HE INSISTED. HE ASSURED US THE COURT WOULD BE PLEASED IF INFORMAL CONTACT RESUMED, SUBJECT TO CARINA'S AGREEMENT. WHILE HE ACKNOWLEDGED THAT EVEN THE MOST PRECOCIOUS AND MATURE 11-

YEAR OLD COULD NOT MAKE A DECISION ON VISITATION FREE OF INFLUENCE BY HER MOTHER, HE ALSO FELT THAT WHATEVER THE REASON BEHIND CARINA'S FEELINGS, THEY MUST BE ADDRESSED. HE THEREFORE FELT THAT MEDIATION MIGHT HELP REDUCE MRS. SYLVESTER'S ANXIETY AND THEREFORE TAKE THE PRESSURE OFF CARINA, INCREASING THE QUALITY AS WELL AS THE FREQUENCY OF MR. SYLVESTER'S ACCESS. HE SUGGESTED THAT HAVING A SOCIAL WORKER ACCOMPANY CARINA AND HER FATHER ON OUTINGS MIGHT HELP PAVE THE WAY, BUT ONLY FOR THE PURPOSE OF REASSURING MRS. SYLVESTER, NOT TO MONITOR MR. SYLVESTER. HE VIEWED ANY CONCERNS ABOUT A RE-ABDUCTION OF AN 11-YEAR OLD AS UNREALISTIC.

17. OVER AND OVER, FUCIK EMPHASIZED THAT THE AUSTRIAN SYSTEM VIEWED ENFORCEABLE ACCESS AS ACCESS THAT HAS BUY-IN FROM ALL PARTIES. HE THEREFORE FELT THAT SUCCESSFUL VISITATION MUST OCCUR FIRST, AND THEN BE ENSHRINED IN A COURT ORDER. FOR THIS, HE SAID, MEDIATION IS KEY. MCCA